

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLEY J ESTES
Claimant

APPEAL 18A-UI-08196-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/24/18
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work
Iowa Admin. Code r. 871-24.23(28) – Work Search Warning

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 31, 2018, (reference 02), unemployment insurance decision that warned claimant to make at least two work-search contacts per week but did not deny benefits for the week-ending July 28, 2018. After due notice was issued, a telephone conference hearing was scheduled to be held on August 22, 2018 at 11:00 a.m. On August 7, 2018 claimant sent in a written statement indicating she would be unable to attend the hearing, as she was working from 8:00 a.m. to 5:00 p.m. Claimant was then contacted regarding her availability for an alternate hearing date and time. Claimant responded by indicating she was available only from 6:00 p.m. to midnight. On August 10, 2018 claimant was offered an alternate hearing date and time of August 21, 2018 at 12:00 p.m., after indicating her lunch break was from 12:00 p.m. to 1:00 p.m. Based on this information the hearing was rescheduled for August 21, 2018 at 12:00 p.m. On August 14, 2018 claimant sent another email indicating she had an 11:30 a.m. appointment and would not be able to participate at the newly scheduled hearing time. Claimant was offered the opportunity to conduct the hearing at 10:00 a.m. on August 21, 2018, appear at the newly scheduled hearing time, or submit a written statement in lieu of participation. Claimant participated via a written statement.

ISSUE:

Did the claimant make an adequate work search for the week-ending July 28, 2018, and was the warning appropriate?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant claimed benefits for the week-ending July 28, 2018. According to the administrative record she did not make two work searches for that week. Claimant's written statement reads as follows:

I am presently still able and looking for work. I am making two contacts a week. I did have problems with my phone for a bit, but have secured a new phone. Hopefully that will prevent any problems in the future.

It is not clear from this statement if claimant made an error in the reporting system when filing the weekly claim due to the issues with her phone or actually failed to perform her weekly work search. Claimant did not provide a copy of her written work search contacts record, any information as to where she applied, her application method (resume, online, in-person), what the response to those applications were, or if she had previously made applications to those employers. Claimant is categorized in group code 6 for work-search requirements.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not made an active and earnest search for work during the week-ending July 28, 2018.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(28) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

Iowa Admin. Code r. 871-24.22(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

24.22(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate

that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring

hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made

to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

The April 2018, *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 19:

CONTINUED ELIGIBILITY

Work Search Requirements Unless waived by IWD, individuals are required to make a minimum of two job contacts each week. The work search requirement may be waived if an individual is temporarily unemployed and expects to be recalled by their former employer within a reasonable period of time or is in school and approved for Department Approved Training (DAT). The work search requirement will be determined each time a claim is filed.

In order to meet the work search requirements, individuals must make two job contacts between Sunday and Saturday of the week they are claiming benefits. Contacts may be made in person, online, by mail, email or faxing résumés or applications. Telephone calls are not acceptable. The work search must be a reasonable and honest effort to find suitable work. Failure to perform an honest effort (sic) work search may result in the denial of benefits.

Individuals must be willing to accept a reasonable wage for the job for which they are applying. A (sic) individual may not apply for the same position with the same employer more than once every six weeks.

Individuals must keep a written record of all work search contacts for a period of one year and be ready to provide a copy if requested by IWD. Failure to comply may result in denial of benefits.

The information needs to include:

- Date of the contact
- Company name, address and phone number
- Contact name
- Method of contact ie. (sic) in person, online, email, mail
- Results of contact

IWD recommends using the form provided at the back of this book. Members of a union hiring hall are required to be in good standing and must contact the union in accordance to hall rules.

Group code 6 designation allows work searches by résumé and does not require in-person work searches. The claimant has failed to sufficiently demonstrate to the satisfaction of the administrative law judge an active and earnest search for work for the week-ending July 28, 2018. Accordingly, the warning was appropriate.

Claimant has provided information indicating she was having issues with her phone for a period of time and that she had an appointment preventing her from participating in the appeal hearing. Claimant also indicated she is currently working and is only available from 6:00 p.m. to midnight, but provided no information on the type of work for which she is applying or indicating whether these hours of availability are consistent with her base period employment. This brings in to question whether claimant is able to work, available for work, and actively and earnestly seeking work.

DECISION:

The July 31, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant did not make an active and earnest search for work for the week-ending July 28, 2018. Therefore, the warning was appropriate.

REMAND:

The issue of whether claimant is able to, available for, and actively and earnestly seeking work as delineated above is remanded to the Benefits Bureau for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs